

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH & HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN EDITH CLARK**, on January 27, 2003 at 8:05 A.M., in Room 472 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Edith Clark, Chairman (R)  
Sen. John Cobb, Vice Chairman (R)  
Rep. Dick Haines (R)  
Rep. Joey Jayne (D)  
Sen. Emily Stonington (D)

**Members Excused:** Sen. Bob Keenan (R)

**Members Absent:** None.

**Staff Present:** Robert V. Andersen, OBPP  
Pat Gervais, Legislative Branch  
Lois Steinbeck, Legislative Branch  
Sydney Taber, Committee Secretary

**Please Note:**

**Audio-only Committees:** These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp refers to material below it.

**Committee Business Summary:**

Hearing & Date Posted: None.  
Executive Action: Senior and Long Term Care Division:  
Aging Services  
Adult Protective Services  
Veterans' Services  
Medicaid Services

**EXECUTIVE ACTION ON MEDICAID SERVICES**

**Statewide Present Law Adjustments**

*{Tape: 1; Side: A; Approx. Time Counter: 0.3 - 1.5}*

**Motion/Vote:** SEN. COBB moved that DP 101, HOME AND COMMUNITY-BASED SERVICES WAIVER CASELOAD, BE ADOPTED. Motion failed 2-3 with SEN. COBB and REP. JAYNE voting aye on a voice vote. REP. HAINES voted SEN. KEENAN's proxy. REP. CLARK said that she would accept SEN. STONINGTON's vote for 24 hours.

**Lois Steinbeck, Legislative Fiscal Division (LFD)**, explained that DP 103 would annualize the intergovernmental transfer (IGT) program increase that occurred this fiscal year. **SEN. COBB** asked if this was the one that was supposed to move the money back into nursing homes from Mental Health Program (MHP), and **Ms. Steinbeck** replied that it was not but is the amount that was distributed to nursing homes and would annualize the nursing home IGT.

*{Tape: 1; Side: A; Approx. Time Counter: 3.0 - 3.7}*

**Motion/Vote:** SEN. COBB moved that DP 103, NURSING HOME FY02-03 IGT BUDGETED ADJUSTMENTS, BE ADOPTED. Motion carried 3-2 with REP. HAINES and SEN. KEENAN voting no on a voice vote. REP. HAINES voted SEN. KEENAN's proxy. REP. CLARK said that she would accept SEN. STONINGTON's vote for 24 hours.

*{Tape: 1; Side: A; Approx. Time Counter: 5.7 - 6.3}*

**Motion:** SEN. COBB moved that DP 105, HOME-BASED CASELOADS AND FY 02 BASE CORRECTIONS, BE ADOPTED.

**Discussion:**

**Ms. Steinbeck** said that there is a correction required in MBARS, but this does include the two percent caseload growth each year of the biennium, and it is straight general fund. **SEN. COBB** added that caseload increase has been between eight and ten percent per year, but they have been trying to get this down to the projected level of two percent a year. **REP. HAINES** asked if the \$1.4 million error is part of the \$3 million increase. **Norm Rostocki, Senior and Long Term Care (SLTC) Fiscal Bureau**, explained that after accrual was done and after the fiscal year end, they discovered a calculation error. They had done the accrual correctly, but had not calculated it correctly in the spreadsheet, which is why MBARS was not accurate. In future, they will do this another way.

*{Tape: 1; Side: A; Approx. Time Counter: 9.2 - 9.5}*

**Vote:** Motion failed 2-3 with SEN. COBB and REP. JAYNE voting aye on a voice vote. REP. HAINES voted SEN. KEENAN's proxy. REP. CLARK said that she would accept SEN. STONINGTON's vote for 24 hours.

**CHAIRMAN CLARK** said that it could be revisited if they find funds somewhere.

*{Tape: 1; Side: A; Approx. Time Counter: 9.5 - 10.6}*

**Ms. Steinbeck** addressed the LFD issue with regard to the ongoing caseload projection and said that her general fund estimate is \$850,000 lower than the Department's estimate.

*{Tape: 1; Side: A; Approx. Time Counter: 10.6 - 12.7}*

**Motion:** SEN. COBB moved that DP 106, NURSING HOME CASELOAD GROWTH BASE CORRECTION AND RATE INCREASE, BE ADOPTED.

**Discussion:**

*{Tape: 1; Side: A; Approx. Time Counter: 11 - 14}*

**REP. JAYNE** asked for clarification of the LFD issues involved, and **Ms. Steinbeck** said it was a two-part issue: a base correction for an accrual, which is not at issue here, and how to project ongoing nursing home caseload. Referring to the graph on B-149 of the Budget Analysis, she said that it shows that nursing home bed days peaked in 1995. If you look at 2002 actual, bed days continued to decline. Her own estimate is based on the lowest decline, which is about seven-tenths of a percent, and the executive has increases of twenty-five hundredths of a percent the first year and one-half percent the second year. **REP. JAYNE** asked if the issue was the request for an increase while caseload growth is trending down, and **Ms. Steinbeck** said that it was; however, part of the increase is annualization of the provider rate increase. The only thing at issue between the two projections is whether the caseloads go up slightly or whether they will go down slightly. If they were to take the LFD recommendation, it would be an \$850,000 decrease over the biennium, but would still be a substantial increase in the nursing home present law adjustment.

*{Tape: 1; Side: A; Approx. Time Counter: 14.1 - 16.8}*

**Kelly Williams, Administrator of Senior and Long Term Care (SLTC) Division,** added that they have slowed down the growth on the waiver caseload. Individuals who are eligible for the waiver are also eligible for the nursing home. To the extent that there is no capacity in the community for the waiver, those individuals will gravitate to the nursing home side of the program. There

will be some caseload growth because there is no capacity within the community to serve those individuals. As an entitlement, Medicaid has to serve them so there is the potential to exceed the budget.

**Ms. Steinbeck** explained that the IGT is a one-time payment to nursing homes which supplements daily rates and is based on the Medicaid rates, the difference between the upper payment limit (UPL), nursing home participation, and Medicare rates. The Subcommittee always has the option to divert part of the IGT money for general fund increases in this program.

**{Tape: 1; Side: A; Approx. Time Counter: 16.8 - 17.2}**

**Vote:** Motion failed 3-3 with SEN. COBB, REP. JAYNE, and SEN. STONINGTON voting aye on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

#### **New Proposals**

**Motion:** SEN. COBB moved that DP 102, A GRANT INCREASE TO IMPLEMENT THE TRAUMATIC BRAIN INJURY PLAN 100 PERCENT FEDERAL FUNDING, BE ADOPTED.

#### **Discussion:**

**{Tape: 1; Side: A; Approx. Time Counter: 17.2 - 22.2}**

SEN. STONINGTON questioned the sustainability of funding for this program. **Joyce DeCunzo, SLTC**, said that sustainability is always an issue with grants. The planning grant was used to survey and determine what people need. There are already a number of services developed through the Home and Community-Based Waiver Program for people with traumatic brain injury, and they have discovered that there are a number of services about which people are unaware. The implementation grant will fund education to help people understand what is currently available for their use in the services delivery system. They are hoping that they will be able to develop and strengthen current delivery systems. It is not their goal to develop new systems through the grant.

**{Tape: 1; Side: A; Approx. Time Counter: 22.2 - 25}**

In response to questions from REP. HAINES, **Ms. DeCunzo** said that they have not developed the position description for this full-time equivalent (FTE), but it would be a grade 15 individual with planning and coordination expertise. She said that it may be possible to find this individual within the Department of Public Health and Human Services (DPHHS). She and another staff person with other full-time programs did the planning process; however, implementation would require a good deal more time, so they feel that they need this resource.

**Gail Gray, Director of Public Health and Human Services (DPHHS)**, said that it was more important for the Department to have the federal authority than the FTE. They will need someone to work with the grant, but it is possible to transfer an FTE within the Department. **REP. HAINES** said that he is inclined to support this, but whenever there is another FTE the Department gets a little bigger, and he thinks that they should be able to find someone in the organization to do this. **Director Gray** said that the organization is very large and they can find someone. They do, however, need the federal authority.

**SEN. COBB** asked if it was a one-time grant or if it would continue, and **Ms. DeCunzo** replied that it is a two-year grant with the possibility of one additional year of federal funding.

**REP. HAINES** suggested that they should make it a one-time only, and **CHAIRMAN CLARK** suggested removing the FTE.

*{Tape: 1; Side: A; Approx. Time Counter: 28 - 38.9}*

**Substitute Motion:** **REP. HAINES** made a substitute motion that DP 102, ELIMINATING THE ONE FTE AND RETAINING THE FEDERAL SPENDING AUTHORITY, BE ADOPTED.

**Discussion:**

**REP. JAYNE** asked if the grant requires that an FTE be attached to it, and **Ms. Williams** replied that they do not believe that it does. To the extent that it does, they have the FTE availability within the Department. **SEN. COBB** said that even if they say no FTE, they can still do an FTE within administrative rule.

**Director Gray** reiterated that they would need someone to do the work, but would find that individual within the Department; they are willing to do without an additional FTE for this purpose.

**Ms. Steinbeck** added that the executive branch has the prerogative and authority to establish the level of FTE it considers necessary to do the work; the legislative prerogative is funding. Their decision here signals that in developing the base budget for the next legislative consideration, the Subcommittee would not consider this FTE ongoing or permanent. **Director Gray** observed that they take the intent of the Subcommittee seriously and would do as it intends.

Responding to requests for clarification from **REP. JAYNE, Ms. Steinbeck** explained that in developing the base budget the executive puts forward the level of FTE funded by the legislature for purposes of establishing the next base budget. If the executive were to create a new modified level FTE for this

decision package, it would not be included in the base level of funding. In the next biennium, they would be dealing with the base budget in DP 102. The Department decision package would be permission to include one more FTE in the base budget funding level.

**{Tape: 1; Side: A; Approx. Time Counter: 38.9 - 40.4}**

**REP. HAINES** once again expressed his concern that every time the base shows up there are more FTE in it, and he believes that they can find someone to administer this program without adding to the base in terms of FTE. The program has good potential, but he does not think that they need to hire more people.

**{Tape: 1; Side: A; Approx. Time Counter: 39.7 - 40.3}**

**Vote:** Motion carried 6-0 on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

**{Tape: 1; Side: A; Approx. Time Counter: 40.3 - 47.1}**

**SEN. STONINGTON** apologized for being late and asked the Department what impact the failed motions would have. **Mr. Rostocki** replied that the failure of DPs 101 and 106 leaves them little flexibility because those on waivers in nursing home eligibility are not eligible for care in the nursing home. When there is no flexibility in waiver caseload and caseload projections for the nursing homes are decreased, it compounds the problem. The fact that both failed indicates that they may have a problematic situation. **Director Gray** commented that they will be revisiting Medicaid caseload later in the month. **John Chappuis, Deputy Director of DPHHS**, indicated that they will have a more complete Medicaid caseload projection in February, which will adjust every one of the caseload DPs for every Medicaid position.

**Motion:** **SEN. COBB** moved that DP 104, IGT SPENDING AUTHORITY, BE ADOPTED.

**Discussion:**

**{Tape: 1; Side: B; Approx. Time Counter: 1.4 - 2.1}**

**Ms. Steinbeck** said that this is the IGT spending authority for the upcoming biennium, which will allow counties to spend state special revenue (SSR) match to draw down additional federal revenue authority. The Subcommittee may wish to consider whether it will allow nursing homes to retain and the Department to redistribute this funding to nursing homes or divert part of it to cover general fund costs in this division or other areas.

**REP. JAYNE** requested clarification on the SSR of \$3.8 million.

**Ms. Steinbeck** replied that those are county funds transferred to

the State to draw down the federal match. Last biennium, this Subcommittee made it clear that IGTs were a one-time-only payment, and it created a separate appropriation for the IGT.

**{Tape: 1; Side: B; Approx. Time Counter: 2.1 - 7.1}**

**REP. JAYNE** asked how this one-time-only payment had worked out for the Department, and **Ms. Williams** replied that it had been very effective. It is a mechanism where two transactions occur - counties provide the local matching funds that the State leverages against Medicaid, and the State provides additional funding to county facilities. A smaller lump-sum distribution is then made to other nursing facilities that are not affiliated with counties. **REP. JAYNE** then asked if they are interested in this language, and **SEN. COBB** said that he has no problem in changing the motion to a one-time-only.

**{Tape: 1; Side: B; Approx. Time Counter: 7.1 - 7.5}**

Without objection from the rest of the Subcommittee, it was agreed that they would include that one-time-only language in the motion.

**Motion/Vote:** **SEN. COBB** moved that DP 104, NURSING HOME IGT SPENDING AUTHORITY AS A ONE-TIME-ONLY, BE ADOPTED. Motion carried 6-0 on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

#### **LFD Issue with Regard to DP 113**

**{Tape: 1; Side: B; Approx. Time Counter: 7.5 - 12}**

With respect to DP 113, **Ms. Steinbeck** explained that the Division is requesting additional federal spending authority of \$1 million per year if it finds additional federal funds from refinancing money. She addressed the related LFD issue of whether the Subcommittee would like to centralize all such authority in the Refinancing Unit. **SEN. STONINGTON** said that she approves of the concept of putting all refinancing projects in one place for tracking purposes. They may wish to consider how it will be authorized. **Mr. Chappuis** explained that if it were to be put with the Refinance Unit, it would be with the Director's Office, and the only complicating factor would be that when it is expended, it will be expended in the division programs where savings occur. This would require them to do a budget amendment of some type to move the money to the appropriate setting, but it would also enhance accountability.

Responding to a request regarding the type of language it would take to do this, **Ms. Steinbeck** suggested that it would not necessarily take language to do this. If they pass the DP, they could direct staff to move it to the Director's Office. She said that she is anticipating that in the wrap-up session, they will

have more discussions about refinancing. If the Department actively refinances and frees up general fund, the Subcommittee may wish to direct how the Department will use that money. She recommended that they defer the language, concepts, and discussion on refinancing.

***{Tape: 1; Side: B; Approx. Time Counter: 12.4 - 13.4}***

**Motion/Vote:** SEN. STONINGTON moved that DP 113 BE ADOPTED AND DIRECTED STAFF TO MOVE THE DECISION PACKAGE INTO THE DIRECTOR'S OFFICE FOR FURTHER DISCUSSION ABOUT AUTHORIZING LANGUAGE. Motion carried 6-0 on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

***{Tape: 1; Side: B; Approx. Time Counter: 13.4 - 19.2}***

**Ms. Steinbeck** said that they could defer action on DP 992 since they had already deferred Medicaid provider rate cuts in other divisions. It was agreed that they would look at the entire array of Medicaid provider rate cuts.

**Ms. Steinbeck** reviewed DP 992 and said that in testimony of this, the Department had indicated that individuals who would have their home-based therapy services cut could access outpatient therapy providers. However, in Health Policy Services Division (HPSD), there is an unspecified reduction in optional Medicaid services, and it is unclear which optional services those would be. There is a potential that it could be these same therapies in an outpatient setting which would require individuals in this situation to go to a hospital to receive the service. They need to watch for cost shifts because there are certain mandated benefits and eligibilities where, if the State opts in to the Medicaid program without a waiver, it must do x, y, and z. Most optional services are optional because of the place of delivery. Outpatient services are optional, but if a person were to go to a hospital to get services that are medically necessary, then the services would be provided in the hospital. The Department did request a waiver from the Central Medicaid and Medicare System (CMS) which would say that if they do not have an optional service they waive the provision of the service, unless it is related to an inpatient stay. This would mean that a person would have to be admitted to the hospital to receive services now considered optional.

***{Tape: 1; Side: B; Approx. Time Counter: 17 - 19.2}***

**Mr. Chappuis** reviewed some of the reductions that were considered and rejected and those options that they have decided to allow. They are waiting to hear from CMS on the optional services.

***{Tape: 1; Side: B; Approx. Time Counter: 19.2 - 22}***



**SEN. STONINGTON** suggested that they defer on this decision package. **REP. JAYNE** asked when they would get back to those decision packages that had been deferred. **Ms. Steinbeck** said their last week would be devoted to wrap up. **REP. JAYNE** expressed her concerns about deferring action because she wants to know the Subcommittee's priorities. **SEN. STONINGTON** said that she is not ready to commit on DP 993 because there is so much still up in the air about the impact of including transplants or not, and the impact of that on physical therapy needs. They do not now have a clear picture of the needed money.

*{Tape: 1; Side: B; Approx. Time Counter: 22 - 26.2}*

**REP. JAYNE** next asked the Department why they do not have the information before them, yet. **Director Gray** said that extensive thought has been put into this, but the Medicaid program brings in \$500 million per year. If they are off even a small amount on their projection, it is still a huge amount of money. In order to give the Subcommittee the best information on what is happening in Medicaid, they must wait because there are not enough Medicaid bills submitted in this year to know where they are going. They want to wait until almost the last day on this so that they can give them the January figures. It is a priority, but there is not enough data right now.

*{Tape: 1; Side: B; Approx. Time Counter: 26.2 - 33.7}*

Without objection, they agreed to defer on DP 992.

**Ms. Steinbeck** reviewed DP 994, a reduction of the Meals-on-Wheels program. The reduction is actually a \$257,000 general fund reduction each year of the biennium for aging services programs. The Aging Services Program would have the flexibility to decide where to make the reductions, but the executive believes that more of those reductions will be made in the meals programs because that is where the majority of the money is spent. **REP. JAYNE** asked the Department how it would specify the allocation of money in this program. **Ms. Williams** said that area agencies on aging were asked how they would implement the reductions at the local level, and this is where they made the cuts. The Department does not direct the area agencies and local programs as to where the reductions in their programs should be made. The Department would pass the funds through at the reduced rate, and the service cuts would be a local decision.

Responding to a follow-up question from **REP. JAYNE**, regarding the recommendation to make the cuts, **Ms. Williams** said that they needed to come within the funding targets they were given, and this was a program area with general fund dollars, so it had to be looked at. **REP. JAYNE** asked what other programs in the Aging Services Program they had looked at, and **Ms. Williams** replied

that they had hit upon every program area to make their reductions, including provider rate reductions and elimination of services. Responding to numerous follow-up questions from **REP.**

**JAYNE** regarding the reduction of meals, **Charles Rehbein, Bureau Chief of Aging Services**, said that the program serves about 1.8 million meals a year. If they were to take the full \$257,000 reduction out of the meals program, they would need to reduce the number of meals by 67,000. **Director Gray** said that another reason this program was selected for reductions was that there is lack of cost shift, and there is not much match that would be lost. None of the reductions are easy to make.

In further follow-up regarding FTE from **REP. JAYNE, Ms. Steinbeck** said that there are 194 FTE, 113 of whom are in the veterans' homes. There are six and one-half FTE in division administration, but if the Subcommittee accepts the half FTE reduction, there would be six FTE. **Director Gray** said that this is a division in which there is a very small administrative organization. **Ms. Steinbeck** added that 40 of the FTE positions are in Adult Protective Services (APS). **CHAIRMAN CLARK** told **REP. JAYNE** that they have a tobacco bill from which they are hoping to give back much of the funding that has been reduced.

*{Tape: 2; Side: A; Approx. Time Counter: 0.8 - 2.9}*

**CHAIRMAN CLARK** suggested that they defer on this decision package, and it was agreed. **Ms. Steinbeck** assured the Subcommittee that she and Pat Gervais, LFD, would bring back all of the deferred and failed decision packages. She then moved on to DP 995, which will eliminate the hospice program, and said that the reductions do not take into account the unknown cost shift to hospital or nursing home care. The Subcommittee agreed to defer action on DP 995 until they have more information and funding.

*{Tape: 2; Side: A; Approx. Time Counter: 5.7 - 7.3}*

The changes in Medicaid eligibility standards in DP 996 include: 1)elimination of real property for sale exclusion; 2)changing the treatment of income from contracts for deed; 3)exclusion of the value of life estates when the life estate is being used to produce income; and 4)limiting the exclusion of home property under the intent to return rule. **Ms. Steinbeck** said that the changes would affect all Medicaid programs, but primarily the SLTC program; an estimated 511 people a month would be affected.

*{Tape: 2; Side: A; Approx. Time Counter: 7.3 - 13.6}*

**Linda Snettiger, Supervisor of the TANF and Medicaid Policy Unit**, said that the eligibility change in this area limits the exclusion of the value of a home to six months. It applies to those currently in the nursing home, but it does not apply to

cases where a spouse still lives in the home. Those who have been in nursing homes a long time, usually have a Medicaid lien built up against their property. If the lien equals the equity value of the home, then the individual would not lose eligibility, but if it is less than equity, then they would. They do not immediately lose eligibility because under conditional assistance people are allowed nine months in which to sell their real property.

**Ms. Steinbeck** observed that this will also reduce Lien and Estate Recoveries for Medicaid. If this happens, then it is a cost shift that has not been taken into account. Responding to questions from **SEN. COBB** on this issue, **Ms. Snettiger** said that they estimate that there are 244 people currently under the program who have no likelihood of returning home. She was addressing the exclusion of the home under the return rule, but the 511 people affected would include people who would be affected by those other changes, as well.

*{Tape: 2; Side: A; Approx. Time Counter: 13.6 - 21}*

**SEN. STONINGTON** asked if money brought in from Lien and Estate Recovery can be used to match for federal Medicaid money and if by elimination of the eligibility, they also triple the loss.

**Mr. Chappuis** said that when there is a recovery, the federal government also gets part of it, so there is not a tripled loss. This may have a marginal effect on Lien and Estate Recovery. In follow up, **SEN. STONINGTON** asked how much risk there is in the validity of the numbers involved in the calculation, and **Ms. Snettiger** said that there is a high degree of risk. They polled the county offices to find out how many cases fell into the four categories, and came up with a number that they thought was valid, but it will depend on those who apply for Medicaid and whether they have resources or not. **SEN. STONINGTON** then expressed her concerns about cutting the appropriation from the budget if the calculations are wrong, and **Director Gray** stated that they would not end up with a supplemental, but would end up with program reductions. **SEN. STONINGTON** then asked if the Department can enumerate and change eligibility criteria without statutory direction. **Ms. Snettiger** replied that the changes limiting the exclusion of home property under the intent to return and having to do with nonhome real property require an emergency rule. The remainder can be made by policy or selecting different options in the Medicaid state plan.

*{Tape: 2; Side: A; Approx. Time Counter: 21 - 22.6}*

**SEN. COBB** stated his belief that the emergency rule use was being abused in making these budget cuts. He suggested that they find out from legal staff if this is legal, and maybe the Appropriation Committee can ask the Attorney General. **Director**

**Gray** said they believe that these are emergencies. If they do not take action to reduce expenditures and they run out of money, they will have nothing for the last quarter of the year.

**{Tape: 2; Side: A; Approx. Time Counter: 22.7 - 37.9}**

Responding to a question from **SEN. STONINGTON** regarding where they stand with regard to services and federal requirements for those services, **Director Gray** said that they have a broad package of services, but eligibility for those services is very narrow. **Mr. Chappuis** added that in terms of services for children, all states are required to provide medically necessary services, so for children they meet the federal standard. For adults, the State has mandatory and optional services. The array of optional services for adults is also very broad-based. With regard to eligibility, Montana is very near the bottom, but adjustments could be made to the resource and income limits. **Ms. Steinbeck** observed that if they were to adjust resource much more, then they would lose the federal Children's Health Insurance Program (CHIP) money.

**SEN. STONINGTON** said that she understood that the legislature set the eligibility level, and **Mr. Chappuis** replied that they set one factor of it. **Mr. Chappuis** said that eligibility in Temporary Assistance for Needy Families (TANF) is set at 40.5 percent of the federal poverty level, and that can be adjusted. **Ms.**

**Snettiger** added that TANF eligibility is at the discretion of the State. Most of the Medicaid and children's programs have a bottom floor, at which the poverty rate is set, but the State can be more generous.

Without objection, it was agreed to defer action on DP 996 until they had a complete discussion of eligibility.

**Ms. Steinbeck** commented that the LFD issue with respect to DP 998 was that one-half of the reduction amount of \$50,000 was expended in the last two weeks of the fiscal year for a special project undertaken in the Billings region. The other 50 percent was used throughout the year providing services, assistance, and prevention education.

**{Tape: 2; Side: A; Approx. Time Counter: 37.9 - 38.4}**

**Motion/Vote:** **REP. CLARK** moved that DP 998 BE ADOPTED. Motion failed 0-6 on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

**{Tape: 2; Side: A; Approx. Time Counter: 38.4 - 42.7}**

**Ms. Steinbeck** explained Lien and Estate Recovery for Medicaid recipients, and said that previously, in this program, \$600,000

was deposited to the general fund and the legislature appropriated the balance above \$600,000 for special projects, training, or nursing home enhancement. In the last biennium, SLTC requested that some of the Lien and Estate Recovery be used to fund Adult Protective Services (APS) workers. This biennium there will be a funding switch using Lien and Estate Recovery in place of general fund.

**REP. JAYNE** asked how much of the funds went to the State and how much to the federal government, and **Ms. Steinbeck** replied that it will be at the federal Medicaid match rate, which is 27 percent state and 70 percent federal. Responding to follow-up from **REP. JAYNE**, **Ms. Steinbeck** said that previous to last session, the expenditures were used for one-time projects approved by SLTC. In the last biennium, the legislature approved using the funds to support APS staff. The funding shift was already made this biennium in response to the budget cuts. This has already been done once this biennium by the executive. Unless the legislature appropriated the funding for something specific elsewhere, the executive would still have this prerogative.

*{Tape: 2; Side: A; Approx. Time Counter: 47.5 - 48.4}*

**Motion/Vote:** SEN. STONINGTON moved that DP 999 BE ADOPTED.

**Motion carried 5-1 with SEN. COBB voting no on a voice vote.**

**REP. HAINES** voted SEN. KEENAN's proxy.

#### EXECUTIVE ACTION ON VETERANS' SERVICES

##### **Present Law Adjustments**

*{Tape: 2; Side: A; Approx. Time Counter: 48.7 - 50.9}*

**Motion:** SEN. COBB moved that DP 115, EMVH PROGRAM ADJUSTMENTS, BE ADOPTED.

##### Discussion:

*{Tape: 2; Side: B; Approx. Time Counter: 0.2 - 3.8}*

**Ms. Steinbeck** explained that the executive did adjust the funding mix in veterans' packages between private-pay and cigarette taxes. She asked the Subcommittee's indulgence that if they accept these decision packages to let staff fund them. There will be no net change in SSR, but there will be a net change in cigarette tax revenue. **SEN. STONINGTON** asked for clarification, and **Ms. Steinbeck** said that the veterans' nursing homes receive private-pay and cigarette tax revenue, which are both SSR. The Department estimates that there will be a higher percentage of private-pay revenue which will lower the dependence on the cigarette tax within the same fund type. Referring to the LFD

issue regarding the structural imbalance of the cigarette tax and ending fund balance, **Ms. Steinbeck** said that the Department gave the Subcommittee an updated ending fund balance. Her projection was \$400,000, and the Department's was \$1.5 million. The extra million came from adjustments to incorrect entries in MBARS, which she took, and adjustments in the funding mix of the Executive Budget. She requested additional information, and said that she will return to the Subcommittee if there are further issues related to this.

**Ms. Williams** said that this had been an issue at the Montana Veterans' Home (MVH), but not an issue for Eastern Montana Veterans' Home (EMVH), which is the current decision package.

*{Tape: 2; Side: B; Approx. Time Counter: 4.3 - 4.5}*

Vote: Motion carried 6-0 on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

*{Tape: 2; Side: B; Approx. Time Counter: 4.9 - 6.2}*

Motion: SEN. COBB moved that DP 116, EMVH EQUIPMENT, BE ADOPTED.

Discussion:

REP. HAINES asked what kind of equipment they were talking about, and **Ms. Williams** said that it included high-low beds, specialized wheelchairs, and other replacements of medical equipment beneficial to keeping residents and staff safe.

*{Tape: 2; Side: B; Approx. Time Counter: 6.2 - 6.4}*

Vote: Motion carried 6-0 on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

*{Tape: 2; Side: B; Approx. Time Counter: 6.4 - 14.4}*

With reference to DP 119, **Ms. Steinbeck** said that this is the decision package that includes 9 FTE to adjust the base for overtime, holiday and other differential. It also annualizes the cost in staffing for the new Special Care Unit (SCU), which was added in February of 2002, and SLTC requested the language about using federal and cigarette tax revenue, as well. Funding adjustments need to be made between private-pay and SSR sources.

**SEN. STONINGTON** asked for clarification of what the SSR would do to the ending fund balance, and **Mr. Rostocki** said that if the Subcommittee adopts all of the decision packages, SLTC will receive 11.1 percent of the cigarette tax and the Executive Budget will have an ending fund balance of \$1.5 million. The LFD issue is that as cigarette consumption goes down and expenditures for veterans' nursing care go up, there is a fund balance that is

slowly eroding each year. They put the budget together in March 2002, but upon review needed to make the adjustments that they are proposing at this time. It is a trade-off between the cigarette tax and the ability to pay. The other thing that needs to be remembered is that this budget rides on all of the cigarette tax bills that have been proposed. When they change the total amount that is assessed as a cigarette tax, some bills keep their percentage constant and others change it up or down. Each of the bills affects the revenue stream differently and has a direct impact on the ending fund balance.

**SEN. STONINGTON** asked if they can add trend projections that increased taxes will have on subsequent inflations to the fiscal notes. **Mr. Rostocki** replied that the Department of Revenue has a price elasticity formula built in, and the fiscal notes incorporate the assumption that consumption will decline as the tax and price of cigarettes increases.

*{Tape: 2; Side: B; Approx. Time Counter: 14.4 - 15.2}*

**CHAIRMAN CLARK** asked how much the private-pay rates will go up and whether they are comparable to those in nearby states, and **Ms. Williams** responded that they go up at to \$128.13 at MVH, and \$125 at EMVH. Rates increase on the level of expenditures of the facility, and there has been a significant increase in that rate during this biennium. These rates are comparable to those of other states and between the two facilities.

*{Tape: 2; Side: B; Approx. Time Counter: 15.2 - 16.4}*

**Director Gray** commented that it is important to remember that there is a huge bubble of veterans from World War II moving through the system. While everyone is concerned about the ending fund balance, we still need to care for these veterans.

*{Tape: 2; Side: B; Approx. Time Counter: 16.4 - 22.9}*

**REP. HAINES** asked **Ms. Williams** if veterans' payments are based on what they can afford or if there is some sort of across-the-board formula. **Ms. Williams** replied that they have established a private-pay rate at each facility, and at MVH, there is statutory language with regard to ability to pay, including some disregards. There is a reimbursement process determined on the ability to pay based on the financial resources and other expenditures that they may have. The per-day rate is the difference between what they have the ability to pay and the fixed per-day rate at each facility. This is the amount that is subsidized by the cigarette tax.

**REP. HAINES** asked **Director Gray** if the situation will resolve when the World War II veterans' bubble is past or will there be other huge bubbles, particularly from the Vietnam War. **Director**

**Gray** replied that she does not have the figures on this, but the numbers on Korean War veterans are not as large as they will be for the Vietnam veterans. They are already seeing veterans from the Vietnam War in the facilities. **REP. HAINES** suggested that somewhere down the line, there will be a significant problem due to the decrease in cigarette use causing a decrease in revenue, and they will need to get funding from other sources. **Director Gray** said that they are well aware of this potential, so are very careful with each fiscal note request that they receive relating to cigarette tax.

*{Tape: 2; Side: B; Approx. Time Counter: 22.9 - 24}*

**Motion/Vote:** SEN. COBB moved that DP 119, MVH PROGRAM ADJUSTMENTS, BE ADOPTED. Motion carried 6-0 on a voice vote. **REP. HAINES** voted SEN. KEENAN's proxy.

*{Tape: 2; Side: B; Approx. Time Counter: 24 - 25.4}*

**Motion/Vote:** SEN. COBB moved that DP 122, MVH EQUIPMENT, BE ADOPTED. Motion carried 6-0 on a voice vote. **REP. HAINES** voted SEN. KEENAN's proxy.

#### New Proposals

*{Tape: 2; Side: B; Approx. Time Counter: 25.4 - 37.2}*

**Ms. Steinbeck** reviewed DP 117, a request for a one and four-tenths FTE which would add one minimum data set (MDS) coordinator and a four-tenths laundry position needed as a result of the SCU. It would be funded out of cigarette tax and private-pay revenue. In response to questions from **SEN. STONINGTON, CHAIRMAN CLARK,** and **REP. HAINES** with respect to the MDS and the necessity for a full-time nursing position, **Ms. Williams** said that the MDS is responsible for the care planning process of residents, including accurate quarterly assessments of their nursing, medical, dietary and psychosocial needs, and it does need to be a full-time technical position. There is a time line within which the care planning paperwork must be done, and facility certification and Medicaid and Medicare payments could be jeopardized if plans are not done within that time line. At present there is one individual handling all of this paperwork, but another position is needed to provide needed support to that individual as well as the 15 new beds in the SCU facility. The biennial fiscal impact of both this MDS coordinator and the .4 FTE laundry position on the tobacco tax would be \$109,000. It is calculated in the ending fund balance.

Responding to questions from **REP. HAINES** about the laundry position, **Ms. Williams** said that they do contract some laundry out, but this is a position that would be within the facility to



ensure that laundry is folded and brought to the floor where needed. They have been operating short in this area for a number of years, but the addition of 15 new beds has made it a more pressing need.

**{Tape: 2; Side: B; Approx. Time Counter: 37.3 - 38}**

**Motion/Vote: SEN. COBB moved that DP 117, MVH STAFF, BE ADOPTED.**

**Motion carried 6-0 on a voice vote. REP. HAINES voted SEN.**

**KEENAN's proxy.**

**{Tape: 2; Side: B; Approx. Time Counter: 38 - 46.4}**

Referring to page B-150 of the Budget Analysis and the Department language recommendation, **Ms. Steinbeck** reviewed several instances in which the Division was not able to admit people: when the SCU was being implemented and when they were unable to hire enough staff. When this occurs, the federal government does not pay the per diem charge which results in a higher proportion of the cost being borne by the cigarette taxes. The Department has requested that the legislature allow it flexibility to use cigarette tax above the budgeted level in the event that this happens again; however, the recommended executive language appears to be an implied amendment to statute. Should the Subcommittee want to grant the executive this flexibility, she recommended that it include language which specifies Office of Budget and Program Planning (OBPP) certification of necessity and establishment of a specific appropriation each year of the biennium. They would need to specify an amount in order for it to be a legal appropriation.

**SEN. COBB** commented that he would allow the flexibility, but would want an amount included. He suggested that LFD staff bring some language, and the Subcommittee can then make its decision at that time. **Bob Andersen, OBPP**, suggested a percentage could work as well as a specific amount. **CHAIRMAN CLARK** indicated a preference for a specific amount.

#### **LFD Issue with Respect to DP 109**

**{Tape: 2; Side: B; Approx. Time Counter: 46.4 - 48.9}**

**{Tape: 3; Side: A; Approx. Time Counter: 0.2 - 0.6}**

With reference to DP 109, **Ms. Steinbeck** explained that the expansion of new proposals in Developmental Services Disability (DSD) is rolled in as if it is present law, and Subcommittee actions in Addictive and Mental Disorders Division (AMDD) have included the additional \$43,000 for moving the nursing care centers into the community. She suggested that, if the Subcommittee would prefer, staff could break this into present law and new proposal to show anticipated expansion.

**EXECUTIVE ACTION ON AGING SERVICES**

**Present Law Adjustments**

*{Tape: 3; Side: A; Approx. Time Counter: 0.6 - 1.8}*

**Motion:** SEN. COBB moved that DP 109, BREAKING IT DOWN INTO PRESENT LAW AND NEW PROPOSALS, INCLUDING THE NURSING CARE CENTERS, BE ADOPTED.

**Discussion:**

**REP. HAINES** said that this appears to assume no caseload growth in 2003. **Mr. Rostocki** said that they have seen a relatively low increase in caseload growth this fiscal year. It is difficult to anticipate this particular caseload, but when it does happen, they have no choice but to pay. **Pat Gervais, LFD**, added that in DSD area, they are planning to move 18 individuals out of the two institutions this fiscal year, so this would have a \$15,000 impact over the year.

**REP. JAYNE** requested clarification on the proposed funds and expected increase in the Social Security process fee, and **Ms. Williams** replied that the funds are passed through, depending on the residential living option, as part of the Social Security monthly payment process. There is a \$9 processing fee for each check charged for this service which is projected to go up to \$9.50 in 2004 and \$10 in 2005.

*{Tape: 3; Side: A; Approx. Time Counter: 4.8 - 5}*

**Vote:** Motion carried 6-0 on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

*{Tape: 3; Side: A; Approx. Time Counter: 5 - 5.6}*

**Motion/Vote:** **REP. CLARK** moved that DP 120, AGING FY03 WAGE INCREASE AND FEDERAL SPENDING AUTHORITY, BE ADOPTED. Motion carried 5-1 with **SEN. COBB** voting no on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

**New Proposals**

*{Tape: 3; Side: A; Approx. Time Counter: 5.6 - 7.8}*

**Motion:** **SEN. COBB** moved that DP 114, AGING/HCBS CONFERENCE SPENDING AUTHORITY, BE ADOPTED.

**Discussion:**

Responding to questions from **SEN. COBB** and **REP. JAYNE**, **Ms. Steinbeck** said that this proposal provides spending authority to

allow the Division to spend the SSR which is the fees, registrations, and donations that they receive to put on the conferences. **Ms. Williams** said that the amount is the anticipated cost of the conferences.

*{Tape: 3; Side: A; Approx. Time Counter: 7.8 - 8.4}*

**Vote:** Motion carried 4-2 with REP. HAINES and SEN. KEENAN voting no on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

*{Tape: 3; Side: A; Approx. Time Counter: 8.4 - 9.9}*

**Motion:** SEN. COBB moved that DP 125, OLDER WORKERS PROGRAM GRANT, BE ADOPTED.

**Discussion:**

**Ms. Steinbeck** explained that this is a federally required change in the distribution process of the funds for the Older Workers Program Grant not a change in the amount.

*{Tape: 3; Side: A; Approx. Time Counter: 9.9 - 10.2}*

**Vote:** Motion carried 6-0 on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

**Ms. Steinbeck** explained that DP 284, is a reduction for a half FTE and that it will show up in two programs. The half FTE position that was in this program has been transferred to MVH and is being held open.

*{Tape: 3; Side: A; Approx. Time Counter: 10.2 - 11}*

**Motion/Vote:** SEN. STONINGTON moved that DP 284, .5 FTE REDUCTION, BE ADOPTED. Motion carried 6-0 on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

**EXECUTIVE ACTION ON ADULT PROTECTIVE SERVICES**

**Present Law Adjustments**

**Motion:** SEN. STONINGTON moved that DP 99, APS LIEN AND ESTATE PLA ANNUALIZATION, BE ADOPTED.

**Discussion:**

Responding to questions from **CHAIRMAN CLARK, REP. HAINES,** and **REP. JAYNE,** **Ms. Williams** said that they are doing without the two FTE involved at this time. These FTE would be in the field in abuse and investigative positions, and the Lien and Estate Recovery funds would be used to fund these two FTE. They are requesting the funding be switched from general fund to SSR.

**Mr. Rostocki** added that they are spending at the rate at which the funds come in. They track it on a monthly basis, and it fluctuates based on the value of the properties from which recovery is made. Last fiscal year, the net revenue in this account was \$289,000, and at the end of the fiscal year, there was \$150,000 to which adjustments were made. The money is collected on a contractual basis, and the contractor receives 19.8 percent of the collected amount. The money was spent primarily for APS. He said that he would provide a list with these figures to the Subcommittee. The Division can only spend what the legislature allows them to spend from this account, and if the Subcommittee did not agree to any other spending, the money would accumulate. **Ms. Steinbeck** added that they have already approved the funding switch to use this money to offset general fund in Medicaid.

**{Tape: 3; Side: A; Approx. Time Counter: 25 - 25.3}**

**Vote:** Motion carried 6-0 on a voice vote. **REP. HAINES** voted **SEN. KEENAN's** proxy.

**{Tape: 3; Side: A; Approx. Time Counter: 25.3 - 30}**

**Ms. Steinbeck** apologized with regard to the way that DP 284 was written, and said that she would indicate that their action was for both FTE.

#### **DISCUSSION ON CHANGES IN LC 2134**

**{Tape: 3; Side: A; Approx. Time Counter: 30 - 37.2}**

**Ms. Gervais** distributed the bill draft for the closure of Eastmont and reviewed the strikeouts.

**EXHIBIT** (jhh17a01)

**{Tape: 3; Side: A; Approx. Time Counter: 37.2 - 43.5}**

**Director Gray** said that at present the effective date is July 1, 2003, but it needs to be changed to July 1, 2004. **Ms. Gervais** suggested that they review it on Wednesday. **CHAIRMAN CLARK** said that this would be her preference if there was no objection from the rest of the Subcommittee. There was discussion of a possible companion bill to make the transfer to the Department of Corrections (DOC) and alternatives to such a transfer.

**{Tape: 3; Side: A; Approx. Time Counter: 43.5 - 49.5}**

Referring to the bill draft Section 4, where it repeals 53-20-501, **REP. JAYNE** said that they can not repeal all of 53-20-501 because it includes the Montana Developmental Center(MDC). **Ms. Gervais** said that she would discuss Subcommittee suggestions for change with legal staff.

**REP. JAYNE** reviewed the process that the bill would go through. She stated that she has received many calls and much correspondence on the issue of Eastmont closure, and wants people to have the opportunity to testify on the bill. **CHAIRMAN CLARK** assured her that the vote on the bill would take place at a future time, and that there would be an appropriate amount of time to notice interested parties.

**DISCUSSION ON ELIGIBILITY COMPARISON FOR PROGRAMS AND SERVICES**

*{Tape: 3; Side: B; Approx. Time Counter: 0.3 - 7.9}*

**Ms. Steinbeck** distributed and reviewed an eligibility comparison and funding chart for various services and programs in DPHHS. She noted that in reviewing this information it is interesting that with two exceptions there are federal mandates for each of the listed programs. The Mental Health Services Plan (MHSP) and Developmental Disabilities (DD) are both funded from general fund. The lowest financial eligibility is 40 percent of the poverty level in Family Medicaid, and the highest is in DD services where there are no financial eligibility limits for any of the funding services other than Medicaid. All services except DD require a copayment.

**EXHIBIT (jhh17a02)**

*{Tape: 3; Side: B; Approx. Time Counter: 7.9 - 12.9}*

**Ms. Steinbeck** went over the Medicaid eligibility requirements. **SEN. STONINGTON** requested a little history on the policy discussion on this issue over the years with respect to why they have crimped down on eligibility, but expanded services. **Ms. Steinbeck** noted that there has not been such a policy discussion since she has worked there. Since most optional services substitute for a mandatory service and often the optional cost of a service is lower than a mandatory service, if individuals needing services were to go to hospitals to get them, there would be a cost shift. Other states may not have such a broad package, but they often establish service limits. The last study done on this indicated that limiting services could result in cost shifts, particularly if the other services are readily accessible.

**Director Gray** said that there is a third part in the amount of service that people receive, and this is a place to crimp down. For instance, without prior authorization, limiting physician visits to ten per year. Referring to the chart, she questioned the 160 percent for MHSP, and **Ms. Steinbeck** said that there were companion bills last biennium, one to raise CHIP eligibility to 160 percent and one to raise MHSP. CHIP went down to 150 percent of poverty and through oversight MHSP was not raised.

**SEN. STONINGTON** said that part of the discussion should be controlling Medicaid costs and insuring the working poor.

**{Tape: 3; Side: B; Approx. Time Counter: 12.9 - 17.4}**

**Mr. Chappuis** noted that in the short term cutting rates does make a savings, but in the long term low rates limit access to services. With limitations in provider access, there is outpatient growth and cost shift to other settings. **SEN. STONINGTON** referred to Oregon and its novel approach with prioritization, and asked if they are trending the same as everyone else. **Mr. Chappuis** said that they have had even more severe problems than Montana. He said that while Oregon's waiver allows it to prioritize even children's services and limit mandatory services, they are subject to the same pressures when cuts are made.

**{Tape: 3; Side: B; Approx. Time Counter: 17.4 - 21.4}**

**REP. HAINES** said that Oregon had prioritized to come to grips with the problem, and perhaps prioritization is the way to go. He is carrying a bill to limit transplants to corneal transplants, and perhaps that is a start in this. **Mr. Chappuis** observed that there is some allowance to what can be done in that area.

**Ms. Steinbeck** added that her recollection was that Oregon had Medicaid eligibility at 200 percent of poverty - they expanded their eligibility and limited scope. When the Subcommittee makes comparisons, they should look closely at eligibility. If Montana's eligibility were at 200 percent of poverty, it would cover over 40 percent of the population. Oregon is at a 50-50 match for their benefits rather than Montana's 72 percent federal. **Mr. Chappuis** added that Oregon is able to target eligibility better than Montana as part of its waiver.

**{Tape: 3; Side: B; Approx. Time Counter: 21.4 - 29.4}--+**

There was continued discussion of the reduction of provider rates, and the potential for limited access under those circumstances.

**Ms. Steinbeck** suggested that Subcommittee members review the comparisons and make suggestions of other benefits they would like added to the chart (Exhibit 2).

**ADJOURNMENT**

Adjournment: 11:18 A.M.

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REP. EDITH CLARK, Chairman

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SYDNEY TABER, Secretary

EC/ST

**EXHIBIT** (jhh17aad)